



Claimant injured his left shoulder on November 2, 1992. The Administrative Law Judge found that claimant's average weekly wage was \$100 and awarded claimant permanent partial disability benefits based upon a 25 percent whole body functional impairment. Claimant requested review of both of those findings. In addition, the respondent and its insurance carrier requested the Appeals Board to review the findings pertaining to the appropriate period of temporary total disability. Therefore, those three issues are now before the Appeals Board on this review.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds as follows:

The Award of the Administrative Law Judge should be affirmed.

The Appeals Board finds the Administrative Law Judge's analysis and conclusions are correct and the Appeals Board hereby adopts the Judge's findings as its own. As found by the Administrative Law Judge, claimant's average weekly wage is \$100, the amount claimant drew on a weekly basis from his business operation. Because net profit is a concept determined by tax accounting principles and not always indicative of actual cash flow or the actual economic gain derived from a business operation, net profit is not always the proper measure to determine average weekly wage for an unincorporated business activity. The better measure of average weekly wage in this case for claimant as a proprietor of an unincorporated business is the amount actually disbursed to the claimant plus the amounts paid for the claimant's personal nonbusiness-related expenses.

The Appeals Board also agrees with the Administrative Law Judge's finding that claimant is entitled to receive permanent partial disability benefits based upon a 25 percent whole body functional impairment rating. Claimant's contention that he is permanently, totally disabled is not supported by the greater weight of the evidence. As indicated by James Molski, a vocational rehabilitation consultant, claimant sustained a 40-45 percent loss of access to the open labor market considering Dr. Schlachter's work restrictions and a 3 percent loss considering the restrictions of his treating physician, Dr. Fleske. Therefore, although claimant's shoulder injury restricts his employment opportunities, the injury has not extinguished them. The greater weight of the evidence indicates claimant has sustained a permanent partial general disability rather than a permanent total disability. Further, claimant has a zero percent wage loss because he retains the ability to earn a comparable wage.

Considering both loss of access to the open labor market and loss of ability to earn a comparable wage, the Appeals Board finds that claimant has a work disability that is less than his 25 percent functional impairment rating. Therefore, as provided by K.S.A. 1992 Supp. 44-510e, claimant is entitled to receive permanent partial general disability benefits based upon his functional impairment rating.

The Administrative Law Judge correctly determined that claimant was entitled temporary total disability benefits until his medical release on April 19, 1994.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bruce E. Moore dated January 17, 1996, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Kent Roth, Great Bend, KS  
Martin J. Keenan, Great Bend, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director